IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1400 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL NATHABHAI RANGABHAI
Versus
STATE OF GUJARAT

Appearance:
MR PC MASTER for MR HB SHAH for Appellants Nos. 1-3
MR MUKESH PATEL, Ld. AGP for Respondent

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. The appellants, original claimants whose agricultural lands came to be acquired by the respondent - Authority and Deputy Collector, Modasa, District : Sabarkantha at Himmatnagar in a Land Reference No.26 of 1984, pursuant to a Notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act) dated 7/8/1980 where awarded the market price at Rs.1.50 per sq.mtr. which upon reference at the instance under Section 18 came to be upwardly revised by the District Court, Sabarkantha, at Himmatnagar to Rs.5.50 per sq.mtr. in respect of Revenue Survey No.628 which is directly challenged at the instance of the appellants in this appeal under Section 54 of the Act.

2. The Executive Engineer, Gujarat Electricity Board, Nadiad had sent proposal to acquire the agricultural properties bearing Survey Nos.626, 627 and 628 of village Malpur in Sabarkantha District for the purpose of the construction of 66 K.V. Sub-Station. The Deputy Collector, Modasa initiated the acquisition proceedings and public Notification under Section-4(1) of the Act on 7/8/1980 followed by under Section 6(1) dated 26/6/1981. The notice under Sections 9 (1), (2), (3) and (4) of the Land Acquisition Act has been served to the concerned parties and after making hearing, the Deputy, Collector, Modasa made an award and awarded compensation in respect of acquired lands. The lands acquired are agricultural lands. There were three Land Reference Cases Nos.25, 26 and 27 of 1984 in respect of Revenue Survey Nos.627, 628 and 626. The Reference Court passed the common judgment in respect of all the three references on 19/09/1986. The appellants, who are the original brothers and who are the owners of the agricultural lands bearing Revenue Survey No.628, have challenged the award of the Reference Court by filing this appeal.

3. We have heard the rival submissions of the learned advocates appearing for the parties, we are also taken through the evidence in course of submissions before us. We have also examined the entire record. The relevant proposition of law was also highlighted before us and after taking into consideration all the relevant

facts and circumstances and the evidence on record and the relevant legal preposition, we are also of the clear opinion that the award of the Reference Court is not only on very conservative side, but also partly unjust, unreasonable and improper requiring our interference for upwardly revision, for the purpose of just, proper and reasonable award to the claimants before us in view of the provisions of Sections 23 and 24 of the Act.

4. Needless to mention that the object of Section 23 of the Act is to provide lawful and just compensation for the acquisition of lands made by the respondent Authority. The State has authority to acquire land, for the purpose of public cause and utility, situated within the limit of its jurisdiction which is characterized as eminent domain but it is always subject to the compensation to be paid to the persons whose lands are acquired and the amount of compensation made by the authority always subject to judicial scrutiny or review and if it is notice upon the anvil of the scrutiny and justice and judicial review that the amount of compensation awarded to the owners of the land does not confirm or is incompatible with the provisions of Section 23 and read with Section 24 of the Act. In light of the evidence of record, it becomes obligatory for the designated Court to put such decision, order or award in its legal and proper shape.

5. There are essentially three methods of evaluation of market price or value of the land acquired ;

(1) The assessment on the basis of comparable sale instance;

(2) Capitalization Method ; and

(3) Determination on the basis of experts opinion;

After having gone into the entire documentary evidence placed on record, the Reference Court, for the reasons not known to us, has not seriously examined and appreciated the capitalization method since there is sufficient documentary evidence that the lands acquired are fertile, irrigated and useful parcel of agricultural lands wherein, three crops are taken, with the help of irrigation from the well within the land itself. The documentary evidence produced at Exh.43 to 59 would leave no any manner of doubt that the agricultural lands of the appellant, original claimants, before acquisitions were put to maximum utility and there were three crops of

cotton, groundnut, wheat etc. The revenue record in the form of Village Form Nos.7-12, 6 and other documentary evidence couple with Map produced at Exh.43 and supported by the evidence of witnesses of the claimants makes clear that the lands acquired are very useful, fertile, crop bearing lands and, therefore, the method of capitalization, out of the agricultural produce could have been considered successful. The Reference Court has failed to appreciate this aspects and its correct, proper and perspective.

6. Be that as it may, the Reference Court has awarded only an amount of Rs.5.50 per sq.mtr. on the basis of sale instance of nonagricultural lands and sale transaction evidence which is produced at Exh.16. In that transaction, the market price was at the rate of Rs.22/per sq.mtr. No doubt, it is in relation to nonagricultural lands in respect of Revenue Survey No.703. However, the Reference Court has sliced down the said market value to the extent of almost 25% and has considered the market price at the rate of Rs.5.50 per sq.mtr.. The reasons in support of which were articulated in paras (14) and (15) do not seem to be in consonance with the principles and the provisions of Section 23 of the Act. There is no clear reasons as to why it has been sliced down to the extent of 20%. The Exh.16 land is adjoining to the lands of the appellants, original claimants, which is required to be seriously probed and analyzed so as to see that just and reasonable amount of compensation is determined.

7. We have seen the Map at Exh.43. It leaves no any manner of doubt that Exh.16 sale instance is comparable, reliable and proximate for the purpose of determining and ascertaining the market price of the lands under acquisition. There is no dispute about the fact that the lands of the original claimants had a well. It was irrigated and three crops were taken, it is situated adjacent to as can be seen in the Map at Exh.43. As a matter locations were potential for development and marketability will be on a higher pedestal. It is not far from the market yard and the saw mill in the same village. Of course, the lands under Exh.16 are nonagricultural land whereas the lands under acquisition of the appellants, original claimants are agricultural lands and, therefore, the development costs, the difference in categorization of the lands in terms of utility and potentiality will have to be taken into consideration, the development costs looking to the geographical situation would not be in any case more than 15% of the market price of the land covered under sale

instance at Exh.16. Even still taking a conservative view in the matter and considering the peculiar facts and special circumstances, some of the facts are highlighted here as under ;

It had a well, it had a Mahuda tree, it is on the main road, it was irrigated, the three crops were taken. It is not far from the Market Yard of the Saw Mill.

The claimants would be entitled to at least additional amount of compensation of Rs.4.50 per sq.mtr.. Therefore, in our opinion the claimants shall be entitled to the market value at the rate of Rs.10/-- per sq.mtr. They would be also entitled to statutory benefits. The appellants, original claimants shall be entitled to interest at the rate of 12% on the enhanced amount and also enhanced solatium. They would be also entitled to recover the enhanced amount of compensation with interest at the rate of 9% from the date of taking over the possession i.e. 26/12/1983 for the one year and at the rate of 15% for the remaining period till the date of payment.

8. Before parting we may place it on record that the Reference Court has not appreciated the sale instance evidencing transaction or transfer of land by the Panchayat of the same village to the Dena Bank for starting a branch which was at the rate of Rs.60/- per sq.mtr. Unfortunately, the year in which this transaction had taken place is not mentioned or brought out to our notice. Be that as it may, since Exh.16, as we have noticed, is a comparable sale instance, which is also considered by the Reference Court, but not in its correct perspective and with full application governing the amount of compensation under the provisions of Section 23 of the Act.

9. In the net result, the profile of award of the reference Court which also revised, the award of the Land Acquisition Officer would merge in terms of the directions and discussions herein before, in our judgment. The award shall be drawn accordingly. The appeal is allowed to the aforesaid extent with costs.

(J. N. Bhatt, J.)

(Akshay H. Mehta,J.)

(vrp)*